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B.C., Appellant)	
)	
and)	Docket No. 21-0702
)	Issued: March 25, 2022
U.S. POSTAL SERVICE, POST OFFICE,)	
Honolulu, HI, Employer)	
)	

³ The Board notes that, following the February 26, 2021 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

ISSUE

The issue is whether appellant has established more than two percent permanent impairment of the right lower extremity and one percent permanent impairment of the left lower extremity, for which she received schedule award compensation.

FACTUAL HISTORY

On February 14, 2011 appellant, then a 52-year-old custodian, filed an occupational disease claim (Form CA-2) alleging that she developed a bilateral plantar fasciitis condition due to factors of her federal employment, including excessive walking and standing. She first became aware of her condition and that it was caused or aggravated by her federal employment on March 25, 2010. OWCP accepted the claim for bilateral plantar fibromatosis and paid appellant appropriate intermittent wage-loss compensation on its supplemental compensation rolls as of March 10, 2011. By decision dated May 31, 2013, OWCP terminated her wage-loss compensation benefits effective that day. In 2016, appellant relocated to Nevada and continued to work full time as a custodian for the employing establishment.

On December 24, 2013 appellant filed a claim for compensation (Form CA-7) for a schedule award. By decision dated February 26, 2015, OWCP granted her a schedule award for two percent permanent impairment of the right lower extremity and two percent permanent impairment of the left lower extremity. The period of the award ran for 11.52 weeks from January 31 through April 21, 2014. The schedule award was based on the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment* (A.M.A., *Guides*).⁴

On September 4, 2018 appellant filed a Form CA-7 for an increased schedule award.

In a March 6, 2019 report, Dr. Mesfin Seyoum, a family medicine specialist, noted appellant's history of injury, reviewed clinical studies and conducted a physical examination. He provided impressions of plantar fibromatosis of the bilateral feet. Utilizing the diagnosis-based impairment (DBI) methodology under Table 16-2, page 501 of the sixth edition of the A.M.A., *Guides*, Dr. Seyoum found that appellant had two percent permanent impairment of both lower extremities. For each lower extremity, he assigned Class 1, grade C impairment with a default value of one percent impairment for the class of diagnosis (CDX) of plantar fasciitis (plantar fibromatosis). Dr. Seyoum found grade modifier for functional history (GMFH) of 2, grade modifier for physical examination (GMPE) of 2, and grade modifier for clinical studies (GMCS) of 1. He calculated a +2 grade modifier adjustment under the net adjustment formula,⁵ which resulted in a grade E or two percent permanent impairment of each lower extremity.

On July 9, 2020 OWCP referred appellant to Dr. Brandon Snead, a Board-certified physiatrist, for a second opinion examination. In a report dated August 14, 2020, Dr. Snead noted his review of her medical history and medical records along with a statement of accepted facts (SOAF) and noted his examination findings, which included that she provided limited effort on

⁴ A.M.A., *Guides* (6th ed. 2009).

⁵ (GMFH - CDX) (2-1) + (GMPE - CDX) (2-1) + (GMCS - CDX) (1-1) equals 2 net adjustment.

ankle range of motion (ROM) testing.⁶ He indicated that appellant's bilateral plantar fasciitis (disorder)/plantar fascial fibromatosis had reached maximum medical improvement (MMI) as of August 14, 2020. Referring to Table 16-2 of the A.M.A., *Guides*, Dr. Snead assigned Class 1, grade C impairment with a default value of one percent impairment for a CDX of plantar fasciitis, fibromatosis. For both the right and the left lower extremity, he found a GMFH 1, GMPE not applicable, and GMCS 0. Using the net adjustment formula, Dr. Snead found a net adjustment of -1,⁷ which equated to Class 1, grade B or 1 percent permanent impairment for both the right and the left lower extremities.

In a September 17, 2020 report, Dr. Michael M. Katz, a Board-certified orthopedic surgeon serving as the district medical adviser (DMA), found that the date of MMI was August 14, 2020, the date of Dr. Snead's second opinion examination. The DMA concurred with Dr. Snead's impairment rating of one percent permanent impairment for each lower extremity based on the DBI methodology. He further found that the A.M.A., *Guides* did not allow for an alternative ROM impairment calculation based on the accepted conditions. Since the present impairment did not exceed the prior award of two percent permanent impairment to each lower extremity, the DMA found that no additional impairment was due to either extremity.

By decision dated October 22, 2020, OWCP denied appellant an increased schedule award. This was based on the August 14, 2020 clinical findings of Dr. Snead and the September 17, 2020 report of Dr. Katz, serving as DMA, who opined that she had one percent permanent impairment of each extremity, which was less than the two percent permanent impairment previously awarded on February 26, 2015.

On October 27, 2020 appellant, through counsel, requested a telephonic hearing before a representative of OWCP's Branch of Hearings and Review.

By decision dated December 16, 2020, an OWCP hearing representative set aside OWCP's October 22, 2020 schedule award decision as there was no evidence that OWCP had forwarded Dr. Seyoum's March 6, 2019 impairment report to the DMA. The hearing representative requested that OWCP amend the SOAF to include all pertinent facts and refer it along with all relevant medical records, including Dr. Seyoum's March 6, 2019 impairment rating, to its DMA to calculate appellant's lower extremity impairments under the reprinted 2009 version of the sixth edition of the A.M.A., *Guides*.

On December 28, 2020 OWCP issued an updated SOAF and referred the case back to its DMA for clarification. In a December 30, 2020 report, Dr. Katz, again serving as the DMA, reviewed appellant's medical record, including the updated SOAF and Dr. Seyoum's March 6, 2019 report. He advised that no discrepancies were noted with respect to the Dr. Seyoum's final percentage of two percent permanent impairment for the right lower extremity and two percent permanent impairment for the left lower extremity. Dr. Katz opined, however, that, under Table 16-6, the GMFH should be more appropriately characterized as 1 as opposed to 2. The DMA noted that he earlier accepted the report of Dr. Snead, which recommended one percent permanent impairment for both the right and the left lower extremities for the identical key factor. He

⁶ Dr. Snead took three measurements with a goniometer of ankle ROM for both the right and left foot.

⁷ (GMFH - CDX) (1-1) + (GMCS - CDX) (0-1) = -1.

explained that the difference lay in the assignment of grade modifiers and calculation of net adjustment, which was intrinsically somewhat subjective. The DMA accepted Dr. Seyoum's report as it would extend the doubt to appellant for the additional one percent permanent impairment for the left lower extremity based upon the grade modifier assignment. He indicated, however, that the point was moot as neither Dr. Snead nor Dr. Seyoum found an additional award for either the right lower extremity or the left lower extremity greater than that previously awarded. The DMA then recommended two percent right lower extremity permanent impairment with a date of MMI of March 6, 2019 and one percent left lower extremity permanent impairment with a date of MMI of August 14, 2020. The DMA further found that, as the present impairment did not exceed the prior award of two percent permanent impairment for both extremities, no increased award was due.

By decision dated February 26, 2021, OWCP denied appellant's claim for an increased schedule award. It found that she currently had one percent permanent impairment for her left lower extremity, which was a one percent decrease from her previously awarded two percent impairment, and two percent permanent impairment for her right lower extremity, which was zero percent increase from her previously awarded two percent impairment. OWCP accorded the weight of the medical evidence to its DMA's report of December 30, 2021.

LEGAL PRECEDENT

The schedule award provisions of FECA and its implementing regulations set forth the number of weeks of compensation payable to employees sustaining permanent impairment from loss or loss of use of scheduled members or functions of the body.⁸ However, FECA does not specify the manner in which the percentage of loss shall be determined. For consistent results and to ensure equal justice under the law to all claimants, good administrative practice necessitates the use of a single set of tables so that there may be uniform standards applicable to all claimants. Through its implementing regulations, OWCP adopted the A.M.A., *Guides* as the appropriate standard for evaluating schedule losses.⁹ As of May 1, 2009, schedule awards are determined in accordance with the sixth edition of the A.M.A., *Guides* (2009).¹⁰

In determining impairment for the lower extremities under the sixth edition of the A.M.A., *Guides*, an evaluator must establish the appropriate diagnosis for each part of the lower extremity to be rated. With respect to the foot, the relevant portion of the leg for the present case, reference is made to Table 16-2 (Foot and Ankle Regional Grid -- Lower Extremity Impairments) beginning on page 501.¹¹ After the CDX is determined from the Foot and Ankle Regional Grid (including identification of a default grade value), the net adjustment formula is applied using the GMFH,

⁸ 5 U.S.C. § 8107; 20 C.F.R. § 10.404.

⁹ 20 C.F.R. § 10.404; *E.S.*, Docket No. 20-0559 (issued October 29, 2020); *see also* Ronald R. Kraynak, 53 ECAB 130 (2001).

¹⁰ *See* Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010); *see also* Chapter 2.808.5a. (March 2017).

¹¹ *Supra* note 5 at 501-08.

GMPE, and GMCS. The net adjustment formula is (GMFH - CDX) + (GMPE - CDX) + (GMCS - CDX).¹²

OWCP's procedures provide that, after obtaining all necessary medical evidence, the file should be routed to a DMA for an opinion concerning the nature and percentage of impairment in accordance with the A.M.A., *Guides*, with the DMA providing rationale for the percentage of impairment specified.¹³

It is well established that benefits payable under 5 U.S.C. § 8107(c) are reduced by the period of compensation paid under the schedule for an earlier injury if: (1) compensation in both cases is for impairment of the same member or function or different parts of the same member or function; and (2) the latter impairment in whole or in part would duplicate the compensation payable for the preexisting impairment.¹⁴

Section 8123(a) of FECA provides in pertinent part: "If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination."¹⁵

ANALYSIS

The Board finds that this case is not in posture for decision.

The Board finds that a conflict exists in the medical opinion evidence between Dr. Seyoum and Dr. Snead regarding the grade modifiers to be assigned for appellant's accepted plantar fibromatosis condition, Class 1 impairment, under Table 16-2 of the A.M.A., *Guides*. Dr. Seyoum assigned a GMFH of 2, GMPE of 2, and a GMCS of 1. Dr. Snead, however, assigned a GMFH of 1, GMPE of not applicable, and a GMCS of 0.

Dr. Katz advised that he did not find any discrepancies with respect to Dr. Seyoum's final percentage of two percent permanent impairment for the right lower extremity and two percent permanent impairment for the left lower extremity. He opined, however, that the GMFH, which Dr. Seyoum noted for both lower extremities was 2, but should be more appropriately characterized as 1. The DMA noted that he had earlier accepted Dr. Snead's impairment findings of one percent permanent impairment for both the right and the left lower extremities for the identical key factor. He explained that the difference between the impairment reports of Dr. Seyoum and Dr. Snead lay in the assignment of grade modifiers and calculation of net adjustment, which was intrinsically subjective. The DMA then accepted an additional one percent permanent impairment for the left lower extremity. However, he offered no explanation as to why the right lower extremity was not also allowed the additional one percent permanent impairment

¹² *Id.* at 515-22.

¹³ See *supra* note 10 at Chapter 2.808.6(f) (March 2017). See also *D.L.*, Docket No. 20-1016 (issued December 8, 2020); *P.W.*, Docket No. 19-1493 (issued August 12, 2020); *Frantz Ghassan*, 57 ECAB 349 (2006).

¹⁴ 20 C.F.R. § 10.404(d). See *D.P.*, Docket No. 19-1514 (issued October 21, 2020); *S.M.*, Docket No. 17-1826 (issued February 26, 2018).

¹⁵ 5 U.S.C. § 8123(a).

despite the fact that Dr. Seyoum had assigned the same grade modifier for both the left and the right lower extremities. As there is an unresolved conflict in the medical evidence, the case must be remanded to OWCP for referral to an impartial medical examiner (IME) for resolution of the conflict in accordance with 5 U.S.C. § 8123(a).¹⁶

On remand OWCP shall refer the case record, the SOAF, and appellant to a specialist in the appropriate field of medicine, to serve as an IME, for a reasoned opinion regarding the extent of appellant's permanent impairment of her lower extremities. Following this and any other such further development as deemed necessary, OWCP shall issue a *de novo* decision.

CONCLUSION

The Board finds that the case is not in posture for decision.

ORDER

IT IS HEREBY ORDERED THAT the February 26, 2021 decision of the Office of Workers' Compensation Programs are set aside, and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: March 25, 2022
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

¹⁶ *Id.*